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GENERAL AND COMPLETE DISARMAMENT

International arms transfers

Report of the Secretary-General

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I. INTRODUCTION

1. On 6 December 1991, the General Assembly adopted resolution 46/36 H, entitled "International arms transfer", paragraphs 5 to 9 of which read as follows:

"The General Assembly,

"...

"5. Invites Member States to provide the Secretary-General with relevant information on their national legislation and/or regulations on arms exports, imports and procurement, and administrative procedures, as regards both authorization of arms transfers and prevention of the illicit arms trade;

"6. Calls upon affected States to provide the Secretary-General, in accordance with national judicial procedures, information regarding arms and military equipment, seized by authorities, destined for the use of terrorists, drug traffickers and organized crime and for mercenary and other destabilizing activities, when this would assist the eradication of the illicit arms trade;

"7. Requests the Secretary-General to make the necessary arrangements to make available for consultation by Member States the information referred to in paragraph 5 above, and to publish the information provided in connection with paragraph 6 above;

"8. Also requests the Secretary-General to assist, upon request and within available resources, in holding meetings and seminars at the national, regional and international levels, as pertinent, with a view to:

"(a) Promoting the concept of transparency as a confidence-building measure;

"(b) Increasing the awareness of the destructive and destabilizing effects of the illicit traffic in arms and to exploring ways and means for its eradication;

"(c) Promoting the development of internationally harmonized laws and administrative procedures relating to official arms procurement and arms transfer policies;

"(d) Promoting regional and international efforts to eradicate the illicit traffic in arms and providing advisory assistance to Member States, when so requested, on measures for enforcement of relevant rules and administrative procedures as recommended in the study, with a view to, inter alia, facilitating cooperation between Member States in the training of their customs and other appropriate officials;

"9. Further requests the Secretary-General to report to the General Assembly at its forty-seventh session on progress made in implementing the present resolution".

2. The present report is submitted pursuant to the request contained in paragraph 9 of the resolution.

II. ACTION UNDERTAKEN

3. In accordance with the request contained in resolution 46/36 H, the Secretary-General, in a note verbale dated 25 February 1992, 1/ requested Member States to provide him with the relevant information requested in paragraphs 5 and 6 of the resolution. Information has been received thus far from Austria, Czechoslovakia, Denmark, Fiji, Malta, the Philippines and Sweden. 2/ The information is reproduced in section III of this report. Any additional information received from Member States will be issued as addenda to the present report.

4. As regards the mandate contained in paragraph 8 of the resolution, the Secretary-General has not received any specific requests to that end. Nevertheless, he wishes to point out that the subjects of international arms transfers, in general, and transparency as a confidence-building measure, in particular, have both been included in the programme of several regional conferences organized by the Office for Disarmament Affairs in cooperation with various Governments in the recent past. Resources permitting, it is planned to continue that practice.

Notes

1/ The same note verbale was again sent out on 25 June 1992, addressed to newly admitted Member States of the United Nations.

2/ In a note verbale addressed to the Secretary-General dated 15 July 1992, Sweden provided information regarding both international arms transfers and transparency in armaments. That information is contained in the report of the Secretary-General on transparency in armaments (A/47/370) submitted under item 61 (l) of the provisional agenda.

III. INFORMATION RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]

[27 July 1992]

1. Austria regulates the import, export and transit of arms by law, the so-called Kriegsmaterialgesetz BGBl.540/1977.i.d.g.F., in connection with a decree by the Federal Government (Kriegsmaterial BGBl.624/1977). This decree also contains a list of the relevant arms.

2. The import, export and transit of arms is considered to mean a transfer across the federal borders and thus encompasses regulations for bonded warehouses and other relevant customs provisions.

3. Approval for transfers of arms across the federal borders, including transport by air, even in the case of overflights, is obligatory.

4. Approvals are granted by the Federal Ministry of the Interior upon agreement with the Federal Ministry for Foreign Affairs and the Federal Ministry for Defence after consultations with the Federal Chancellery. Approvals require the absence of any other opposing obligations resulting from national or international provisions.

5. In approving the relevant application it has to be considered that the import, export or transit be not contrary to international obligations or foreign policy interests of the Republic of Austria. Special consideration has to be given to Austria's permanent neutrality.

6. The export or transit shall not be carried out into a region in which an armed conflict is either prevailing or threatening to break out, or in which dangerous tensions exist.

7. The export or transit shall not be carried out into a country with grave and repeated human rights abuses.

8. Embargo decisions by the United Nations Security Council have to be taken into account also under consideration of Austria's permanent neutrality.

9. The Federal Government can make the approval of arms exports dependent on an end-user certificate.

10. Paragraph 3 (1 a) of the Kriegsmat.G. contains a special provision for measures that the Security Council takes under Chapter VII of the Charter of the United Nations. The relevant law grants certain relaxations for imports for the federal armed forces, federal guard contingents, guards of the

Ministry for Justice and customs guards. Export relaxations are provided for the Austrian contingents in peace-keeping operations abroad (para. 5).

11. Paragraph 4 of the Kriegsmat.G. authorizes the Federal Government to prohibit the export of arms for civilian purposes and of civil ammunition into certain countries. On this legal basis arms embargoes imposed by the Security Council are implemented.

12. Exports of arms and ammunition that are not contained in the arms list (Kriegsmaterialliste) also require obligatory approval on the basis of the Foreign Trade Law (BGBl.184/1984.i.d.g.F.).

13. Concerning paragraph 6 of resolution 46/36 H, it has to be mentioned that Austrian security forces are required to pay special attention to illicit arms transfers. At present, the Austrian authorities do not possess any relevant knowledge of significance.

14. A copy of the relevant Austrian law (Kriegsmat.G.), as well as of the decree issued by the Federal Government concerning arms, was attached in German only, and may be consulted in the Office for Disarmament Affairs.

CZECHOSLOVAKIA

[Original: English]

[30 June 1992]

1. The Czech and Slovak Federal Republic is continuously interested in the transparency of international transfers of conventional weapons. It was a co-sponsor of General Assembly resolution 46/36 L (Transparency in armaments). Within the implementation of paragraph 8 of that important resolution, the Czechoslovak representative co-participates in the activities of a panel of governmental technical experts, elaborating technical procedures of the Register and preparing a report on the modalities for the expansion of the scope of the International Register of Conventional Arms, which is to be submitted to the General Assembly at its forty-seventh session. In accordance with paragraph 9 of resolution 46/36 L and paragraphs 2c and 2d of the Register, the Czech and Slovak Federal Republic is ready to provide the United Nations annually with relevant data on its arms exports and imports starting on 30 April 1993.

2. In the sphere of exports and imports of conventional weapons, legislative and administrative approaches to granting permits for exports and imports of weapons and the prevention of the illicit arms trade, the Czechoslovak policy proceeds from the interest of the Czechoslovak State strictly to control exports of Czechoslovak conventional weapons and military material, particularly to areas of tension and conflict.

3. Exports of conventional weapons and military material are regulated by Act No. 560/1991 of the Federal Ministry of Foreign Trade on conditions of issuing official permits to import and export commodities and services, as well as by the principles of giving licences in the sphere of military material, approved by resolution 246/1992 of the Government of the Czech and Slovak Federal Republic, proceeding from the resolution of the eighth session of the State Defence Council of March 1992.

4. These licences are granted by the Federal Ministry of Foreign Trade upon the agreement of the State Defence Council of the Czech and Slovak Federal Republic in the category of "lethal weapons" and of the Inter-Ministerial Commission of the Government of the Czech and Slovak Federal Republic in the category of "non-lethal" weapons.

DENMARK

[Original: English]

[18 June 1990]

1. Pursuant to paragraph 5 of resolution 46/36 H, paragraph 18 of resolution 46/36 L and paragraph 2 of resolution 46/38 D, Denmark submitted a note dated June 1992 entitled "Explicatory note on Danish weapons control", together with five annexes (of which only annex III is in English), as follows:

I. The Danish Weapons Act - Consolidation Act No. 529 of 11 December 1985, with subsequent amendments (Bekendtgørelse af våbenlov).

II. Order of 12 May 1992, issued by the National Agency of Industry and Trade, on the export of certain goods (Bekendtgørelse om udførsel af visse varer).

III. A translation into English of section 6 of the Danish Weapons Act.

IV. Order on Weapons No. 438 of 19 July 1988, with subsequent amendments (Bekendtgørelse om våben).

V. The Danish War Equipment Act No. 400 of 13 June 1990 (Lov om krigsmateriel m.v.).

2. Annexes I, II, IV and V were attached in Danish only, and may be consulted in the Office for Disarmament Affairs.

Explicatory note on Danish weapons export control

3. The rules governing the export of weapons from Denmark are laid down partly in section 6 of the Danish Weapons Act (Consolidation Act No. 529 of 11 December 1985, with subsequent amendments) (annex I), partly in the Order

of 12 May 1992, issued by the National Agency of Industry and Trade, on the export of certain goods (the Order on Exports) (annex II).

4. A translation into English of section 6 of the Weapons Act is attached (annex III).

5. Under the provisions of the Weapons Act, the Minister of Justice has authorized the local chief constables, by Order No. 438 of 19 July 1988 (annex IV), to permit the export of hunting weapons and ammunition for the Faroe Islands and Greenland, the Nordic countries and member States of the European Communities. However, an export authorization is required in each individual case.

6. In addition to this, the Minister of Justice has laid down administrative provisions in the said Order to the effect that hand weapons for use in shooting competitions, hunting, or fishing, for up to three months abroad, may be exported and re-imported on specified conditions without any special authorization. In these cases, travellers will have to complete and hand in a special form to the customs service at the departure and at the time of re-entry.

7. As will appear from section 6 of the Weapons Act, the export of weapons from Denmark requires an authorization from the Ministry of Justice in each individual case with the few exceptions regarding hunting, shooting competitions, and so on mentioned above. As will also appear from section 6 of the Weapons Act, this is an outline provision with a broad formulation, which refers each individual case to further evaluation in order to determine whether an object is comprised by the said provision or not. In the vast majority of cases, this evaluation does not give rise to any doubt, however. According to the practice of the Ministry of Justice, section 6 of the Weapons Act comprises components for products that are covered by the Weapons Act when finished (semi-finished goods). Components for weapons and components for ammunition are thus also comprised by the export prohibition, and irrespective of the number of operations that remain to be performed before the component concerned can be a constituent part of the final product. However, during the administrative procedure, components - such as screw and bolts - which, according to their specifications or the material they are made of, might as well form part of a civil product, are excluded. If - according to their specifications, including the material of which they are manufactured - screws, bolts or the like cannot be envisaged to be used for purposes other than military purposes, they may come under the provisions of section 6 of the Weapons Act. This provision thus opens up the possibility of a certain interpretation of the purpose. It is decisive - due consideration being given to the specifications of the product - whether the product is to be incorporated in equipment intended for land war, naval or air war, for example. Similar viewpoints will be applied when determining the extent to which electronic components and electronic equipment and software are comprised by this provision.

8. In addition to the Weapons Act, the Order on Exports issued by the Ministry of Industry contains rules on the export of weapons, as mentioned. According to this Order, an authorization is required for the export of weapons, inter alia, which are specified in a list attached to the Order as annex II. The list contains a translation of the Munitions List of the Coordinating Committee on Export Controls (COCOM) with some minor differences, the Missile Technology Control Regime (MTCR) list and the Australia Group control list of 50 chemical precursors. The list is continuously revised in accordance with changes in international cooperation.

9. In the vast majority of cases, weapons listed under the Order on Exports are covered by the general definition of weapons under the Weapons Act, including in particular the definition of equipment designed for land war, naval or air war. Furthermore, the export of weapons under the Order on Exports requires authorization in each individual case. Denmark does not handle general export licences and - except again for hunting and competition weapons - no special exemption clauses apply to certain categories of weapons.

10. The Ministry of Justice has been given powers to grant export authorizations under the Weapons Act and the Order on Exports, as far as weapons are concerned. The Ministry of Justice considers approximately 400 applications annually, to which must be added an unknown number of applications dealt with by the chief constables concerning hunting weapons for the Nordic countries and EC. The vast majority of applications are for exports to the United States and other COCOM countries and the Nordic countries.

11. As mentioned, under the present legislation the export of weapons is in principle prohibited. However, there is a possibility of obtaining an export authorization upon specific evaluation of each individual case. Export authorizations for export from Denmark are thus required irrespective of whether the product originates from Denmark or not. Weapons in transit through Denmark thus also require an authorization.

12. As to the administration of the Weapons Act and the Order on Exports, it can be stated that the regular practice followed by the Ministry of Justice is to obtain a statement from the Ministry of Defence in case there is any doubt as to whether the product concerned is comprised by the Weapons Act or the Order on Exports. Quite often the Ministry of Justice receives advance inquiries from manufacturers asking whether an authorization is required for certain exports. Normally, the Ministry of Justice will take its stand on the statement made by the Ministry of Defence. Furthermore, in the vast majority of cases, applications for export authorizations are submitted to the Ministry of Foreign Affairs, which subjects them to a specific evaluation on the basis of Denmark's weapons export policy. In this connection it can be pointed out that for many years it has been the fundamental principle of the Danish weapons export policy to refuse export authorizations for countries involved in military events or territories where conditions are so troubled or unstable that it is to be feared that they will develop into armed conflicts, including civil wars or armed oppression of ethnic groups. Export authorizations are

further refused for countries on which a United Nations - or other international, for example, EC - weapons embargo has been imposed.

13. As will appear from the above, Denmark does not have any positive or negative lists of countries for which authorizations need not be applied for, or for which an export authorization may not be expected to be granted. Each application is subject to a specific evaluation on the basis of the Danish weapons export policy.

14. If the Ministry of Foreign Affairs does not have any comments to make on the export authorization thus applied for, the Ministry of Justice will grant an export authorization for the weapons concerned if the required documentation for import in the receiving country is available. Some form of documentation will always be required for import into the receiving country, and the requirement for documentation depends on the country for which the weapons are intended for export and the quantity hereof. Normally, an import certificate is required, a specific or general import authorization, or a declaration from the competent authorities in the receiving country to the effect that they have no objections to the issuance by the Ministry of Justice of an export authorization. The documentation must be valid, that is to say that it must not be more than one year old, or provided with a confirmation not older than one year from the competent authorities saying that it is still valid. The documentation must be the original or a copy thereof certified by the competent authorities. In addition to this, the Ministry of Justice requires a declaration from the applicant stating that the consignment in question will be sent only to the purchaser indicated in the country stated, and that the applicant is made aware at the same time that making unlawful declarations involves criminal liability. In connection with the so-called COCOM countries, the applicant is required to provide a declaration in addition to the import certificate to the effect that at the time of the shipment of the goods, the applicant will ask the purchaser abroad for a document of title (delivery verification) issued by the authorities of the importing country, and showing that the consignment has been subjected to the provisions of the importing country concerning foreign trade. This delivery verification must be submitted to the Ministry of Justice upon receipt.

15. If the exporter is a Danish government institution and the receiving party is a foreign government institution, no import certificate and no declaration will be required. If the exporting party is a private firm and the receiving party is a foreign government institution, only a declaration made by the vendor, under penalty of the law, to the effect that the goods will be sent to the purchaser stated, is required. If the exporting party is a government institution, but the receiving party is a private firm, an import certificate/delivery verification is required.

16. Furthermore, an end-use statement is required following a specific and individual evaluation.

17. Finally, in respect of the administration of cases of export of weapons it can be stated that export authorizations are granted for a period of validity of six months. The authorizations may be revoked at any time. In addition to this it is a condition that the authorization is produced to the customs service at the time of export. Upon shipment of the goods, the authorization must be submitted to the Ministry of Justice, duly stamped by the customs service which controls that exportation has taken place, or which will otherwise ask the consignor for a declaration on the state of things.

18. It is the customs service that ensures that the Ministry of Justice has granted the necessary authorization in connection with the export of weapons.

19. Violation of the provisions of the Weapons Act and the Order on Exports is subject to penal sanctions. The sanctions vary from fines and simple detention to imprisonment for a term of up to two years. If an enterprise or a person is suspected by the police of violating the export rules under the Weapons Act or the Order on Exports, a search or a seizure to the extent required according to circumstances can be made.

20. In connection with the rules governing the export of weapons it can be mentioned that the manufacturing of war equipment in Denmark requires the authorization of the Ministry of Justice according to the so-called War Equipment Act (annex V). Enterprises in Denmark that have a licence to manufacture war equipment are subject to a specific control - that is, the Danish Government weapons control - which by means of inspections in enterprises, for example, controls that the provisions of the War Equipment Act are complied with. These are, inter alia, that 60 per cent of the share capital has to be Danish-owned and a minimum of 80 per cent of the members of the board of directors have to be Danish nationals. For the purpose of this Act, war equipment typically means firearms, ammunition for military purposes and equipment designed for military use and which is not used for civil purposes at the same time.

Annex III

Translation of section 6 (1) of the Danish Weapons Act

(Consolidation Act No. 529 of 11 December 1985 issued by the Ministry of Justice with amendments pursuant to Act No. 861 of 13 December 1987 (the Weapons Act))

Section 6

1. Exportation of the following items shall be prohibited unless authorized by the Minister of Justice in each individual case:

(a) Any sort of weapons, with the exception of hunting weapons;

(b) Ammunition, with the exception of ammunition for hunting weapons;

(c) Equipment for war at sea, on land and in the air;

(d) Machinery, equipment, apparatus and other means of production used mainly for the manufacturing or maintenance of weapons, ammunition or war equipment, together with components, fittings and accessories for such means of production;

(e) Explosives, including gunpowder, together with raw materials for the manufacturing thereof.

2. The Minister of Justice may prohibit the exportation of weapons and ammunition of any sort whatsoever.

FIJI

[Original: English]

[9 June 1992]

1. The Ministry of Foreign Affairs wishes to advise the Secretary-General that concerning paragraphs 5 to 7 of resolution 46/36 H, the Government of the Republic of Fiji does not have a national legislation that adequately covers "regulations on arms exports, imports and procurement, and administrative procedures, as regards both authorization of arms transfers and prevention of the illicit arms trade".

2. The Government of the Republic of Fiji has an Arms and Ammunition Act Cap 188 which is limited in scope. The Act does not differentiate between military types of arms and ammunition and ordinary arms and ammunition used for sports and so on, and thus the courts do not have the jurisdiction to impose heavy sentences when they ought. Cap 188 is more of a licensing legislation than a checking mechanism on unlawful importation of heavy-duty arms and the penalties provided are being re-examined with a view to securing heavy and severe penalties. In general, except for the police and military, it is illegal to ship arms. The security institutions have special procurement procedures for securing arms, which for security reasons cannot be disclosed.

3. The Government of the Republic of Fiji is currently looking into the Arms and Ammunition Act Cap 188 with a view to widening its scope so as to effectively deter the illegal import of arms and ammunition.

MALTA

[Original: English]

[16 July 1992]

1. In relation to paragraph 5 of resolution 46/36 H, entitled "International arms transfers", arms transfers to and from Malta are prohibited except under an import/export licence issued by the Department of Trade in accordance with the provisions of the Importation/Exportation (Control) Regulations. The clearance of the Commissioner of Police is invariably sought before any such importation/exportation is authorized. It is the current policy that only sporting shotguns can be imported into Malta, apart from firearms that have an antique, artistic or rare value. If such arms are not required for the armed forces of Malta, the procedure is to deposit them in bond on their importation and they will not be released from bond (either for exportation or for use within the Maltese islands) without a permit from the Minister responsible for customs.

2. As regards the information requested in paragraph 6, the Maltese authorities have not had any seizure of arms and military equipment destined for use by terrorists or other criminal organization.

PHILIPPINES

[Original: English]

[22 July 1992]

1. All importations or exportations of firearms require the corresponding authorization to import or authorization to export issued by the Chief, Philippine National Police. No importation or exportation is allowed without such authorization.

2. The importation or purchase of firearms abroad by individuals is prohibited. Only duly licensed dealers are allowed to import firearms for sale to authorized purchasers. However, government or private entities are allowed to import firearms for use of their licensed security guards or by responsible officials and employees.

3. Upon arrival from abroad, all importations of firearms are deposited with the Bureau of Customs for safe keeping until the corresponding customs duties and taxes have been paid. After clearance from the Bureau of Customs, the firearms are turned over to National Police Headquarters under uniformed police escort for safe keeping.

4. Firearms imported by licensed dealers remain deposited with Headquarters until they are sold to persons or entities who have been issued permits to purchase by the Chief, Philippine National Police. On the other hand, those

imported by the Government or private entities are released only after the importers have secured the corresponding licences from Police Headquarters.

5. Firearms covered by authorization to export issued by the Chief, Philippine National Police, are delivered to the Bureau of Customs under escort by a representative from Police Headquarters for delivery to the carrier before departure.

6. For further information, firearms had been occasionally apprehended at thc Bureau of Customs without the corresponding authority from Police Headquarters, but they have not been pinpointed to be intended for terrorists, drug traffickers or other organized crime syndicates.